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No. 87-205

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

ALASKA MINERS ASSOCIATION,

Petitioner,

STATE OF ALASKA, et al.,

Petitioners,

and

TRUSTEES FOR ALASKA, et al.,

Respondents.

ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE ALASKA SUPREME COURT

PETITIONER ALASKA MINERS ASSOCIATION REPLY MEMORANDUM

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The Alaska Miners Association demonstrated in its opening brief that review of this case is warranted for three independent reasons: (1) State courts

need a uniform rule for determining when a private action in state court may be entertained to enforce a federal statute in which Congress has not authorized a private action in federal court; (2) State courts need a uniform federal rule to determine when concurrent state court jurisdiction for enforcement of a federal statute is incompatible with federal interests such that the matter should be left to the exclusive jurisdiction of federal courts; and (3) Review of the merits is necessary because the decision interpreting Section 6(i) of The Alaska Statehood Act has a substantial effect on Alaska's management of its mineral wealth as well as on other courts' interpretation of provisions in the School Lands Act and other statehood acts which are similar to Section 6(i).

Respondents have opposed the petition for certiorari by asserting that the Alaska Supreme Court properly determined: (1) that it had concurrent jurisdiction to hear cases regarding the proper interpretation of Section 6(i) (Respondent's Brief in Opposition (Resp. B.) at 12), and (2) that the State of Alaska is violating Section 6(i) by not charging rent and royalties for the production of minerals from state mineral lands. Resp. B. at 26.

This Reply Brief is limited to responding to the private cause of action arguments raised in Part A of Respondent's Brief in Opposition. Part B of the Respondent's Brief focuses on the merits of the Alaska Supreme Court decision. A question on the merits is not at issue in a petition for certiorari. Therefore, the

Alaska Miners Association does not address the merits in this Reply Brief.[1]

The Respondent's Brief confuses the issues of concurrent jurisdiction and private right of action. While the Alaska Miners Association agrees that no general bar to concurrent state court jurisdiction exists to decide issues involving The Alaska Statehood Act, it does not agree that a private right of action exists to enforce Section 6(i) or that the state court has concurrent jurisdiction to hear such an action. The last sentence of section 6(i) explicitly defines the enforcing party, court and remedy:

> [A]ny lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings

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[1] The importance of the issues decided by the Alaska Supreme Court, however, provides an independent reason for review of the case. See Alaska Miners Association Petition for Certiorari at 12-13.

> instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

Section 6(i) of The Alaska Statehood Act, 72 Stat. 339 (1958) (as amended) (set out in a note preceding 48 U.S.C. §21 (1982)).

In its petition for certiorari, the Alaska Miners Association contends that certiorari should be granted to determine how, in the face of such explicit language, state courts should decide whether a private action in state court may be entertained. Respondents incorrectly assert that the private right of action doctrine is predicated on the [federal] courts' limited jurisdiction under the federal constitution. Resp. B. at 16, n. 7. Because state courts are courts of general jurisdiction, Respondents contend that the private right of action doctrine has no place in state court. Resp. B. at 17. However, as

Justice Rehnquist explained in his concurrence in Cannon v. University of Chicago, 441 U.S. 677 (1979),

> [t]he question of the existence of a private right of action is basically one of statutory construction. And while state courts of general jurisdiction still enforcing the common law as well as statutory law may be less constrained than our federal courts enforcing laws enacted by Congress, the latter must surely look to those law to determine whether there was any intent to create a private right of action under them. (references omitted).

Id. at 717-718. Further, in Davis v. Passman, 442 U.S. 228 (1978), this Court explained that

> [s]tatutory rights and obligations are established by Congress and it is entirely appropriate for Congress, in creating those rights and obligation, to determine in addition, who may enforce them and in what manner.

Id. at 241. In this case, Congress determined the U.S. Attorney General is the party who is empowered to enforce

Section 6(i), and that he may do so (if at all) by suing in the United States District Court for the District of Alaska. Nonetheless, the Alaska Supreme Court has implied a private right of action in state court.

This Court has recently discussed why, in the absence of legislative intent or directive to the contrary, private litigants are not entitled to arrogate unto themselves the federal government's exclusive enforcement prerogatives by means of private actions. In Heckler v. Chaney, 470 U.S. 821 (1985) this Court explained,

> [t]he reasons for this general unsuitability [of judicial review of agency decisions to refuse enforcement] are many. First, an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not only assess whether a violation has occurred, but

> whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested the best fits the agency's overall policies, and indeed, whether the agency has enough resources to undertake the action at all. An agency generally cannot act against each technical violation of the statute it is charged with enforcing. The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities.

Id. at 831. This important policy consideration is applicable to private causes of actions brought in state court to interpret federal statues.[2] The Alaska Supreme Court ignored this vital federal concern in making its determination that a

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[2] This rationale has been applied specifically with respect to public land grants made subject to conditions enforceable to the exercise of powers reserved in the sovereign grantor. See e.g., Downer v. Graham, 21 F.2d 732 (10th Cir. 1927) (suit upon alleged violation of a condition upon the disposition of New Mexico statehood lands may only be maintained by U.S. Attorney General).

private right of action exists under Section 6(i).

The Alaska Court's refusal to apply the private right of action doctrine has resulted in allowing individuals who otherwise could not bring action in federal court to bring an action in state court to enforce a federal statute. The effect is to divert the delicate responsibility of interpreting federal statutes and regulations from federal courts to state courts. Such an outcome cannot have been within the contemplation of Congress when its legislative enactment explicitly names the enforcing party, court and remedy.

As Chief Justice Rehnquist concluded in his concurrence in Cannon, 414 U.S. at 718, "this Court . . . should be extremely reluctant to imply a cause of action absent such specificity on the part of the

Legislative Branch." State courts need guidelines for determining when a private right of action can be implied in state court.

For the reasons addressed in its petition for certiorari, the Alaska Miners Association respectfully requests that its petition be granted.

Dated this 26th day of October, 1987

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